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HATCHER *v.* RICHMOND & C. B. RY. CO.

March 11, 1909.

[63 S. E. 999.]

1. Boundaries (§ 33*)—Conflicting Elements—Presumptions.—

Courses and distances given in a description must yield to fixed monuments where there is a conflict in the description, but, in the absence of evidence, the presumption is that no conflict exists.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 146, 147; Dec. Dig. § 33.* 2 Va.-W. Va. Enc. Dig. 582, et seq.]

2. Boundaries (§ 8*)—Description—Party Wall.—

Where the owners of adjoining tenements divided by a party wall claimed under deeds calling for a straight line between their buildings and lots which extended back to an alley, the center line of the party wall, extended to the alley, constituted the true dividing line.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. § 74; Dec. Dig. § 8.* 2 Va.-W. Va. Enc. Dig. 590; 10 Id. 899.]

3. Boundaries (§ 41*)—Instructions.—

Where plaintiff testified that one of the legs of the trestle of defendant's railroad was four inches under the walls of his tenement, the true dividing line between the lots owned by plaintiff and defendant being the center line of the party wall between the tenements thereon when the parties acquired title, the jury ought to have been instructed that plaintiff was entitled to recover if defendant's structures extended beyond the dividing line and upon plaintiff's premises, and it was error to charge that defendant had a right to erect its structures any where within the lines called for by its deed.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 205-207; Dec. Dig. § 41.* 7 Va.-W. Va. Enc. Dig. 723, et seq., 744; 10 Id. 899.]

PHILLIPS *v.* SOUTHERN RY. CO.

March 11, 1909.

[63 S. E. 998.]

1. Railroads (§ 480*)—Fires—Burden of Proof.—One suing for a destruction of property by fire alleged to have been set by sparks from a locomotive has the burden of proving that the fire originated from sparks.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1713; Dec. Dig. § 480.* 6 Va.-W. Va. Enc. Dig. 133, 134.]

2. Railroads (§ 480*)—Fires—Burden of Proof.—Where a fire originated from sparks from a locomotive, the railroad company must,

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

to escape liability, prove that its engine was equipped with the best mechanical appliances to prevent the escape of sparks, that the engine was kept in proper condition and was properly managed, and that the right of way was clear of combustible material.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 1714; Dec. Dig. § 480.* 6 Va.-W. Va. Enc. Dig. 133; 10 Id. 417.]

3. Railroads (§ 482*)—Fires—Evidence.—Where the evidence showed that a fire originated about the time a local freight passed; that the spark arrester on the engine was out of repair; that the engine threw sparks in unusual quantities about the time the fire originated; that the fire began on the right of way; that the train was behind time, running greatly in excess of its schedule rate, through a heavily wooded country, in a very dry season and on a windy day—the jury were warranted in finding a verdict for plaintiff.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. §§ 1730-1736; Dec. Dig. § 482.* 6 Va.-W. Va. Enc. Dig. 135, et seq.; 5 Id. 305; 10 Id. 417.]

4. Appeal and Error (§ 997*)—Judgment Sustaining Demurrer to Evidence—Review.—Where the jury would have been warranted in finding for plaintiff, the court on writ of error to review a judgment sustaining the demurrer to the evidence and dismissing the case must find for plaintiff.

[Ed. Note.—For other cases, see Appeal and Error, Dec. Dig. § 997.* 4 Va.-W. Va. Enc. Dig. 540, et seq.]

McCROREY *v.* THOMAS.

March 11, 1909.

[63 S. E. 1011.]

1. Exceptions, Bill of (§ 26*)—Construction.—A statement in a bill of exceptions that a physician testifying for plaintiff referred to the case of a man with a depressed fracture of the skull, and, on stating that the injury was occasioned by a blow on the head, he was asked how, and answered that he was struck with a piece of iron rod, and that defendant's counsel objected to this last question, and it was overruled, does not show that it was objected that the witness had no right to give the result of an isolated case, which came under his observation.

[Ed. Note.—For other cases, see Exceptions, Bill of, Dec. Dig. § 26.* 5 Va.-W. Va. Enc. Dig. 375, 376.]

2. Appeal and Error (§ 232*)—Objection Not Made Below—Admissibility of Evidence.—A paper will not be permitted to make one

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.